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IN THE

Supreme Court of the United States

October Term, 1972
Nos. 72-611 and 72-612

MARVIN GOODSON and WILLIAM E. HANNAM,
Petitioners,

vs.

ALLEN V. C. DAVIS, *et al.*,
Respondents.

THOMAS C. MAY, etc.,
Petitioner,

vs.

ALLEN V. C. DAVIS, *et al.*,
Respondents.

Brief of Allen V. C. Davis in Opposition to Petitions for Certiorari.

Both of the above numbered petitions for certiorari arise out of a single lawsuit. The action was originally tried in the Los Angeles Superior Court, *sub nom. Davis v. Custom Component Switches, Inc., etc., et al.* The trial lasted 56 court days, and produced a record of more than 8,000 pages. A complex judgment, mostly favoring the plaintiff, Davis, was rendered by the Court. All of the litigants appealed from those portions of the judgment with which they were dissatisfied; and the appeals were consolidated for briefing, argument, and determination in the California Court of Appeal for the Second Appellate District, *sub nom.*

Davis v. Goodson, et al. On May 23, 1972, the Court of Appeal filed a single opinion, which was not certified for publication.* This opinion, which is reprinted in the appendices to the petitions, fills 91 printed pages. The Court of Appeal affirmed the judgment in Davis' favor in virtually all material respects, but remanded the cause to the trial court for further proceedings in connection with certain aspects of the judgment. The cause is now pending in the Los Angeles Superior Court, awaiting this limited retrial.

Because of the common factual nexus which underlies both petitions, Davis has undertaken to respond to them in a single brief.

I.

Petitioners Have Not Fairly Stated the Case on Which the California Courts Based Their Decision.

Three of the defendants below have petitioned this Court for certiorari, claiming that intervention by this Court is necessary to settle allegedly important questions of federal law, and to resolve an asserted conflict between the unpublished opinion below and the opinions of this Court in other cases.

The principal difficulty with the "Questions Presented" by petitioners is that they are not presented by the

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*Rule 976 of the California Rules of Court provides that an opinion of the Court of Appeal is to be published in the Official Reports only if a majority of the Court rendering the opinion, or the Supreme Court of California, certifies that it meets the standard for publication. That standard, which is set forth in the rule, provides that an opinion shall not be published unless it "(1) establishes a new rule of law or alters or modifies an existing rule, (2) involves a legal issue of continuing public interest, or (3) criticizes existing law." Manifestly, the Court of Appeal and the Supreme Court of California (to which the petitioners' claims have also been presented) did not believe that the opinion met the requisite standard.

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record. They are not based on the factual findings made by the trial court and approved by the Court of Appeal. They are based instead on a factual premise which the petitioners tried—unsuccessfully—to sell to the trial court; which they subsequently tried—again unsuccessfully—to sell to the Court of Appeal and the Supreme Court of California; and which they are now attempting to foist off on this Court as the foundation for their various claims of error.

The Court of Appeal elected to organize its factual recitals around its discussion of the several legal issues disposed of in the opinion, instead of following the usual course of prefacing the opinion with a summary of the facts. (Appendix, 2.) Seizing upon this circumstance, and apparently hoping that the sheer volume of the record would render it impenetrable to close scrutiny by this Court, the petitioners have attempted simply to ignore the case on which the courts below rendered their judgments, and have based their arguments on a misleading and distorted version of the facts.

All of the litigants testified at one time or another during the 56 days of trial, as did a variety of other witnesses called by the defense. More than 200 documentary exhibits were introduced into evidence and examined by the trial court. On the basis of this immense record, the trial judge made elaborate findings of fact, which constitute a detailed summary and distillation of the evidence, reflecting his resolution of all of the conflicts of testimony and inference which were urged by the parties, and disposing of all of the factual issues which were litigated in the case. These findings, together with the trial judge's conclusions of law and

judgment, may be found in the record. [C.T., Vol. 4, 829-872.]

After receiving voluminous briefs and extensive oral argument, the Court of Appeal took this case under submission for eight full months. After its deliberations, the Court of Appeal wrote a lengthy opinion, which reflects on its face that Court's careful and painstaking review of the record, and its sincere efforts to deal with each of the legal contentions advanced by the litigants.

While the Court of Appeal apparently believed that some of the trial judge's findings were "not fully supported or . . . extravagantly put," it concluded that the findings in this category were "not necessary to support the judgment." (Appendix, 6, fn. 2.) On the other hand, virtually all of the crucial findings required to sustain the judgment were found by the Court of Appeal to be supported by substantial evidence, and were accordingly upheld by that Court.

The trial court's judgment was, in most of its aspects, the only proper one he could have reached in the light of the facts he found to exist. The Court of Appeal recognized this to be true, and therefore affirmed the trial court's judgment in most material respects. Davis respectfully submits that there is nothing in this record which would require this Court to disturb the judgments of the courts below.

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II.

Statement of the Case on Which the Courts Below Rendered Judgment for Davis Against Goodson and Hannam.

A. Goodson and Hannam Obtained Their Interest in Custom by Dubbing Their Client Davis.

In 1956, Davis was the sole owner and operator of a valuable and highly lucrative business, known as Hydra-Electric Company, which was manufacturing and selling several devices of Davis' invention. He sought the advice of Goodson and Hannam, lawyers and certified public accountants, about various business and tax problems then confronting him.

Goodson and Hannam devised a complicated plan for Davis, whereby his sole proprietorship would be organized into seven corporations, each of which was to perform some portion of the total activity theretofore performed by Davis as a sole proprietor. They told him that this would save him money by reducing his income taxes. Acting on this advice, Davis acquiesced in the arrangement; and Goodson and Hannam were retained to perform all the legal services involved in setting up the new companies, and thereafter they actively supervised the financial, accounting, and tax aspects of the new arrangement.

In early 1957, Davis inquired of Goodson and Hannam whether they thought he had a problem under the federal renegotiation laws, and if so, what ought to be done about it. Goodson and Hannam advised Davis that he had an urgent and pressing renegotiation problem, which in their opinion required drastic and immediate action. After pretending to explore a variety of alternative solutions, they persuaded Davis by various

fraudulent means and devices to adopt a complex arrangement of their devising, which has been referred to throughout this litigation as the Custom plan.

The gist of the Custom plan was that Davis was to transfer the most lucrative portions of his existing business to three corporations (the Custom companies) which were to be owned and controlled by Goodson and Hannam, and a client of theirs named May. This transfer was to be accomplished by having Davis persuade numerous customers of the Hydra-Electric Companies to cancel their pending purchase orders and reissue identical orders to the Custom companies; by instructing the sales representatives of Hydra-Electric to divert new purchase orders to the Custom companies; by transferring a substantial portion of the Hydra-Electric staff to the Custom payrolls; by furnishing to the Custom companies a complete supply of all of the tangible and intangible items necessary to the successful conduct of a going business, including inventory in various stages of completion, machinery, tooling, drawings and blueprints, qualification test data and reports, production and design know-how, and secret information, and sales and accounting materials; and by assigning to the Custom companies a one-half interest in each of the three inventions for which Davis then had patent applications on file.

As proposed by Goodson and Hannam, the Custom plan did not contemplate that they or their client (May) would personally pay anything at all to Davis in exchange for the transfer of this lucrative, going business. It did not contemplate that the Custom companies would pay Davis anything for the business either, except a fraction—less than 100%—of the profits on

the transferred business, plus a token amount for some of the tangible items to be transferred at the inception of the plan. Indeed, when the plan was originally implemented at the end of April, 1957, there was no writing, but only a handshake deal; there was no agreement as to what percentage of the profits of the Custom companies Davis would ultimately receive; and there was no agreement as to what amount the Hydra-Electric companies would receive in exchange for the tangible items transferred. The percentage was not specified until December of 1957, eight months after the plan went into operation; and nothing was paid to Davis on account of profits until about May of 1958, more than a year after the plan went into effect.

Goodson and Hannam have based their arguments throughout this litigation on the preposterous premise that Davis—claimed by them to be a cunning, shrewd, avaricious and sophisticated businessman—went into this vague, undocumented transaction with his own lawyers on an "arm's length" basis. However, the trial court concluded—in accordance with Davis' contentions—that Davis would never have gone along with the Custom plan, or parted with his business, if it were not for the fraud of Goodson and Hannam.

The judgments below turn on this crucial finding that Goodson and Hannam obtained their interest in Davis' business by defrauding him. The Court of Appeal succinctly summarized this essential fact as follows:

> ". . . Goodson and Hannam took advantage of the renegotiation adversity which beset Davis, of their position as his existing, trusted, and highly-rated attorneys called in to find a remedy for threatened harm, of their special and intimate

knowledge of the situation, and of the trust and confidence which Davis imposed in them, to get him, by making to him false representations and withholding essential advice, to adopt a remedial plan which they could and did manipulate to foster their own interests at his expense." (Appendix, 8.)

The opinion goes on to enumerate some, but by no means all, of the evidence which supports the trial court's finding that it was the actual and deliberate fraud of Goodson and Hannam which induced Davis to transfer his business to Custom. (Appendix, 10-17.)

Briefly, Goodson and Hannam induced Davis to go into the Custom plan by telling him (falsely) that, although they would have the record ownership and actual control of the Custom companies, they would always be managed for Davis' benefit. They told him (falsely) that, in order to avoid disastrous tax and renegotiation consequences, it was imperative that he not own any stock in Custom. Most important of all, Goodson and Hannam assured Davis that, if the surrounding circumstances should ever change, so as to make the continued operation of the Custom plan unsatisfactory or disadvantageous from Davis' standpoint, they could and would arrange to have the transferred business revert or "recircle" back to Davis; and they assured him that the inclusion of this reversion feature would not impair his right to whatever tax and renegotiation benefits the plan would otherwise afford. Actually, Goodson and Hannam had no intention of letting Davis' business revert to him at any time, but intended instead to keep it for themselves.

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From 1958 through 1965, Goodson and Hannam operated the Custom companies (which ultimately merged into Custom Component Switches, Inc.) and paid Davis a percentage of the profits. However, in the latter part of 1965, Goodson and Hannam recommended to Davis that he revise the Custom plan to provide for the termination of all profits-percentage payments within a few years. This was the first hint Davis had of Goodson's and Hannam's actual scheme, which was to "buy" his business with a fraction of his own profits, while retaining the rest of the profits and the residual value of the business for themselves. After consulting independent counsel, he gradually came to realize how badly he had been taken. Accordingly, Davis brought this action in September of 1966.

B. Davis Has Never Asked the Court to Enforce an Illegal Agreement, or to Do Anything Which Would Contravene Federal Law or Policy; and the Courts Below Did Not Do So.

Recognizing the lack of equity in their own position, Goodson and Hannam have elected to wrap themselves in the flag, and argue that this Court has no alternative but to leave them in possession of the business which they fraudulently obtained from their own client, allegedly in order to protect and advance the collection of the federal revenues.

They characterize Davis' claim (erroneously) as one for the specific enforcement of an agreement whereby they were to hold their ownership and control of the Custom companies as dummies for Davis, and whereby they were to turn such ownership and control over to him at his demand; and claim that the judgment below

accomplishes this result.* Although they make no assertion that such an agreement would be illegal *per se*, they now claim that the existence of such an agreement would be inconsistent with the tax and renegotiation positions they advised Davis to take over the years, and that its enforcement would thus somehow encourage the making of illegal contracts and violate public policy.

Of course, as the Court of Appeal correctly observed (fn. 22, Appendix, 30-34) Davis has never sought the specific enforcement of any agreement, legal or illegal. His claim was that he would never have gone into the Custom plan in the first place, if it were not for the false representations of Goodson and Hannam. Thus, he would not have gone into it, if he had known that Goodson and Hannam were planning to feather their own nests instead of acting for his benefit; and he would certainly never have "split his company" and given his business to them for nothing on a handshake basis, if they had not led him to believe that it would

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*Defendants are thus resting their case on the fallacy exposed by Justice Tobriner in his dissenting opinion in *Majewsky v. Empire Construction Co.*, 2 Cal. 3d 478, 85 Cal. Rptr. 819. Noting an apparent circularity in the result he was proposing in that case, he observed:

> "This sort of pseudo-circularity is inherent in the constructive trust remedy, and in any remedy which attempts to cure a wrong by placing the parties in the position they would have occupied, had the wrong not occurred. Take the simplest case for a constructive trust: defendant acquires plaintiff's property by fraud. To impose a constructive trust, we assume that defendant got title to plaintiff's property, but the imposition of a constructive trust restores title to plaintiff *ab initio*. The appearance of circularity of reasoning simply shows that the remedy has worked to obliterate the effect of the fraud or mistake." [2 Cal. 3d at 491, fn. 4.]

So here, the judgment restores Davis to some of the ownership and control he would have had in the absence of the fraud; but it certainly does not change the fact that, for fifteen years—until after the judgment became final in California—the ownership and control have actually been out of Davis' hands.

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and could legally revert to him at any time when a change in circumstances made the plan undesirable from Davis' standpoint. If they had told him then—as they now so vociferously argue—that the possibility of reversion would make the Custom plan unworkable, he would never have gone into it at all. (fn. 11, Appendix, 15-17.)

Accordingly, what Davis sought in this action—and what the trial court and Court of Appeal awarded him—was a judgment impressing a constructive trust on the business which Goodson and Hannam had obtained from him by fraud. As the Court of Appeal said, the conduct of Goodson and Hannam not only constituted a violation of their fiduciary obligations and the high standards of duty attendant on the relation of attorney and client, but also "amounted to fraud providing the trial court with the authority, in fact imposing upon it the obligation to declare a constructive trust" on that portion of Davis' property which they still retained. (Appendix, 18-19.)

Of course, the judgment stripping Goodson and Hannam of their ill-gotten gains, and partially restoring to Davis what they fraudulently obtained from him, does not affect Davis' obligations to the federal government. Whatever those obligations may be, Davis will undoubtedly be required to satisfy them. But that is a matter with which the courts below were not concerned, and with which this Court need not be concerned. The point is that, if Davis had not been fraudulently induced to go into the Custom plan, he would have retained the ownership of his business, and would have received all—rather than merely a fraction—of its profits over the years. To be sure, all of those

profits—like the partial payments he actually got under the Custom plan—would have been subject to the limitations and obligations imposed by the federal tax and renegotiation laws. It is useless to speculate whether he would have kept more or less of them if he had had honest lawyers and suitable tax and renegotiation planning. In any event, there are certainly no considerations of public policy which would justify a judgment in this matter which would leave Goodson and Hannam with the business they obtained by fraud from their own client.

Cf. Redke v. Silvertrust, 6 Cal. 3d 94, 98 Cal. Rptr. 293 (Cert. Den. April 3, 1972; .... U.S. ...., 31 L.Ed.2d 583).

III.

The Telephone Incident Does Not Affect the Judgment Against Goodson and Hannam.

A. The Facts Relating to the Telephone Incident.

The record reflects that, on the evening of June 3, 1970, the trial judge had telephone conversations with Mr. Chodos (one of Davis' lawyers), and with Mr. Smith. Mr. Smith was then appearing of record for Custom Component Switches, Inc.; and was also acting on behalf of May, whose counsel of record, Mr. Beardsley, had unilaterally and precipitately left the trial two months earlier, on March 16. The following morning the trial judge announced for the record the substance of what had transpired the previous evening. Mr. Smith, however, took the stand and testified in somewhat more detail about his recollection of the conversation.

Smith testified that he had finished talking to the judge about 11:00 o'clock p.m., and that, as soon as he hung up the telephone, he called Goodson at home

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to dictate his account of the conversation with the judge into a recording machine. The tape was transcribed before court began the following morning, and Smith had a transcript with him when he took the stand.

It must be emphasized that, on May 26, 1970—a week before the telephone incident—the trial judge had made *and announced* his decision that Goodson and Hannam were liable to Davis for fraud. This decision was reflected in a minute order filed on May 26, 1970, and mailed to all counsel. [C.T., A-407.] As the Court of Appeal correctly holds in its opinion, this decision provided the trial judge, not only with the authority, but in fact with "the obligation to declare a constructive trust." (Appendix, 18-19.) The principal issue remaining for adjudication was whether the trust should extend to everything Goodson and Hannam had fraudulently obtained from Davis, including what they had subsequently transferred to May and the employee defendants; or whether the trust should be limited to the property still remaining in their hands.

At various times between the inception of the Custom Plan in 1957, and the time of trial in 1970, May and employee defendants had acquired interests of various kinds in the Custom companies from Goodson and Hannam. Some of these interests were acquired in good faith and for value, and without notice of Davis' claims. However, the record showed that Goodson and Hannam had attempted to transfer certain rights to May and the employee defendants *after* the filing of suit, and after everyone was fully advised of Davis' claims.

Thus, Goodson, Hannam, and May had entered into a stock purchase and sale agreement in 1964 respecting the shares of Custom, which provided in substance that, if any of them should undertake to transfer his shares, each of the others would have an option to buy the offered shares at book value (rather than fair market value), with the purchase price being paid 15% down, and the balance in installments at a nominal rate of interest over a four-year period. On October 13, 1966, after this suit was filed, and after May testified that he was fully aware of the suit and of the nature of Davis' claims [R.T., 455:24-457:14; 461:2-6], Goodson, Hannam, and May purported to amend the stock purchase agreement to invoke its provisions upon an involuntary transfer. The obvious purpose of this maneuver was to give May an installment-payment string on the Goodson-Hannam shares at book value if Davis should succeed in impressing them with a constructive trust.

The other agreement was dated February 10, 1967, and purported on its face to pledge the Custom shares standing of record in the names of Goodson and Hannam to May, to indemnify him from any detriment or loss he might suffer because of Davis' law suit. This action is identified in the agreement by case name and number.

According to Smith's account of his telephone conversation, the trial judge was concerned that, if he were to impress a trust in Davis' favor on the shares standing of record in the names of Goodson and Hannam, but at the same time sustain the stock rights granted to May in the two post-suit agreements above referred to, he would merely be giving Davis a judgment with one hand, and allowing May to take it away with the

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other. According to Smith, he and the trial judge referred to such a result as a "nugatory" judgment. Smith admitted that the trial judge had said he would be willing to receive any evidence or argument that Beardsley might have to offer on May's behalf in support of his post-suit stock rights. The trial judge confirmed on the record that he had indicated as much to Mr. Smith, and also told Mr. Beardsley that he had not made up his mind, and was willing to receive such evidence or argument, if Mr. Beardsley had any to offer. [R.T., 5130.]

Smith, however, testified that it was his "impression and recollection" that the trial judge had already made up his mind how he was going to rule, and that he was merely "going to protect the record by giving Mr. Beardsley an opportunity to present argument or evidence." Smith testified that it was his "conclusion, from what [the judge] said, and the way in which [he] said it, that any such argument or evidence [by Beardsley] would be futile." [R.T., 5100.]

For reasons which are not entirely clear from the opinion, the Court of Appeal accepted Smith's impressions and conclusions (instead of the trial judge's statements) and concluded that the telephone incident and its aftermath amounted to improper conduct, or at least apparently improper conduct, on the part of the trial judge; that the incident amounted to a violation of due process; and that it infected the trial judge's deliberations and determinations concerning the validity of all of the post-suit agreements relating to the stock rights of May and the employee defendants. Accordingly, the cause has been remanded for a further trial on the issues pertaining to these post-suit stock agreements.

B. There Was Nothing Improper About the Trial Judge's Conduct.

A careful review of the record reveals that the trial judge did nothing wrong, either in making the telephone calls, or in his handling of the proceedings on June 4 and thereafter. A detailed analysis of the record is set forth in Davis' petition for rehearing, filed in the Court of Appeal; and will not be repeated here. Suffice it to say that even Smith himself never indicated to the judge during the telephone conversation that he thought the judge was out of line. Instead, he undertook to chat with the judge about his (Smith's) family, and seized the opportunity to offer *ex parte* arguments about various matters then under consideration. So far from suggesting that it was improper for the judge to be giving him messages for transmission to Beardsley, Smith testified that, when the judge told him about his unsuccessful efforts to reach Beardsley, "I said that I would attempt to relay that message to Mr. Beardsley." [R.T., 5093:10-11.]

If, indeed, Smith had had any real idea that the judge's phone call to him was improper, he would undoubtedly have said so at the time, and insisted on deferring any further discussion until the following morning when all counsel were present. His subsequent assertion of impropriety was obviously the product of his conversation with Goodson, and his discussions with co-counsel for the defense.

If the record indicates that the judge was annoyed by Smith's about-face, and the ensuing defense maneuvers, it is respectfully submitted that his temporary annoyance was appropriate in the light of the provocation.

C. The Judgment Against Goodson and Hannam Cannot Have Been Affected by the Telephone Incident.

As noted above, the basic decision against Goodson and Hannam was made on May 26, 1970, a full week before the telephone incident. The balance of the judgment against them (at least to the extent it has been affirmed by the Court of Appeal) follows naturally and inevitably from the conclusion that Goodson and Hannam obtained their interest in Custom by defrauding Davis.

D. Goodson and Hannam Have Waived Any Claim of Error, Including Federal Error, Based on the Telephone Incident, by Failing to Raise It in the Court of Appeal.

The record shows that it was Mr. Westbrook, trial counsel for Goodson and Hannam, who originally made the motion for mistrial based on the telephone incident. [R.T., 5089.] This motion was denied by the trial court.

A notice of appeal was filed by Goodson and Hannam almost immediately after the judgment was entered. The record shows that Goodson and Hannam filed voluminous briefs in the Court of Appeal. The topical index of their opening brief consists of seven pages, listing literally dozens of alleged grounds for reversal. The reply brief they filed contains eight additional arguments. This does not even count the numerous contentions advanced by them as two of the "intervenors" on behalf of Custom. *Yet, nowhere in all this welter of argument did Goodson or Hannam ever suggest that the telephone incident had affected the fairness of the proceedings, or the correctness of the judgment rendered against them in the trial court.*

The rule in California is well settled:

> "The reviewing court is not required to make an independent, unassisted study of the record in search of error . . . It is entitled to the assistance of counsel. Accordingly, every brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration."
>
> 6 Witkin, *California Procedure 2d* 4391 (Appeal, §425).

The rule has been applied where a point is raised in the briefs, but counsel fails to support it with argument. Obviously, the Court of Appeal cannot have been expected to find error where none was even asserted by Goodson and Hannam in their briefs.

Indeed, until the opinion was filed, the only litigant who complained about the telephone incident was May. Despite the fact that he probably waived his right to complain by his conduct in the trial court; and despite the fact that the order invalidating his post-suit stock rights was the only one which the trial court could have made as a matter of law (because he knew of Davis' claims when he obtained these rights, California Civil Code §2243; and because the transfer was in derogation of the court's jurisdiction in a pending action, California Civil Code §1908); the Court of Appeal gave him the further hearing he requested. It was never asked to give relief to the other defendants on the basis of this incident, apparently

because the other defendants did not consider themselves entitled to such relief.

Nor can Goodson and Hannam claim that they learned something from the opinion of the Court of Appeal which they did not know earlier. Their counsel moved for a mistrial at the time of the telephone incident, alleging that his clients had been or would somehow be prejudiced by it. After the final judgment was entered, however, he apparently recognized that the telephone incident had no effect on the trial or the judgment so far as Goodson and Hannam were concerned. The claim of procedural irregularity, which is now loudly and indignantly presented to this Court by Goodson and Hannam, is obviously the merest pretense, and a desperate attempt to grasp at straws in the hope of staving off the day of reckoning which has been so long delayed.

This Court has repeatedly held that a litigant's failure properly to raise and preserve an alleged federal question in accordance with state rules of procedure, at both the trial and appellate levels of state court proceedings, prevents him from seeking review of such a question here.

Herndon v. Georgia, 295 U.S. 441;
Stembridge v. Georgia, 343 U.S. 541;
Beck v. Washington, 369 U.S. 541, 553.

IV.

This Case Does Not Involve Any Federal Patent Issues.

Petitioner May, in his capacity as a minority shareholder ("intervenor on behalf of Custom"), argues that, even if Davis is entitled to the ownership and control of 60⅔% of Custom's shares, he is not entitled to receive a percentage of its profits. This argument is based on the theory that Davis' switch patent is invalid, both because of lack of invention and because it was in public use or on sale more than one year prior to the date on which the patent was applied for. The defendant-intervenors,* including May, made an offer of proof on these points, which the trial court rejected.

The trouble with this entire contention is that a demonstration of invalidity of the switch patent, on whatever ground, would not affect Custom's obligations to pay Davis 65% of its profits. The trial court found that Custom's obligations to make such payments would not be affected by a determination that the switch patent was invalid. This is because the assignment of the switch patent was not the only consideration, or even the principal consideration, for Custom's obligation to make payments. For one thing, even the written agreements provide that Custom's obligation to make payments shall remain in effect so long as any of the three original patents or any improvement patent remains in effect. Secondly, the real basis for Custom's obligation to pay Davis 65% of its profits is that Custom's entire business (of which the switch patent was only a very small part) was transferred to it by Davis without any other consideration.

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*The other defendant-intervenors, although they pressed their contentions in the Court of Appeal and the California Supreme Court, have not sought certiorari as May has, and are accordingly named as respondents in the petitions.

As the opinion reflects, the Court of Appeal approved the trial court's reasoning and conclusions in this respect. (Appendix, 85-88.)

What all this means is that neither Custom, nor May as one of its minority shareholders, will benefit financially, even indirectly, even if May should somehow succeed in persuading the trial court that the switch patent is invalid. As he made no claim in the trial court, and makes no claim here, that the other patents or improvement patents are invalid, it is obvious that Custom's obligation to make payments will continue without diminution, whatever disposition might be made of their attack on the switch patent. Accordingly, the Court of Appeal was perfectly correct in holding that May had no standing to attack the switch patent.

Just as Goodson and Hannam have appointed themselves champions of the federal tax laws, May claims the right to vindicate an imagined federal policy to strike down federal patents whenever possible, relying on certain language taken out of context from *Lear v. Adkins*, 395 U.S. 653. However, it is only a few months ago that this Court reaffirmed its well settled rule that a litigant must have standing—"a personal stake in the outcome of the controversy"—before he can seek a judicial resolution of any question, even one involving the most important considerations of public interest and public policy.

Sierra Club v. Morton, 405 U.S. 727.

Certainly, there is nothing in this record to suggest that May—merely one of the minority shareholders of Custom—is entitled to waste additional months and years of court time in establishing the alleged invalidity of the switch patent, when he has no personal stake in the outcome.

V.

Conclusion.

Except for those minor points on which the matter has been remanded for further proceedings, the Court of Appeal concluded—after a careful review of the record—that the trial court's judgment was essentially correct; that it was supported by substantial evidence; and that it was based upon settled legal principles. There is no federal question involved in this case which either requires or justifies intervention by this Court. The petitions for certiorari should be denied.

Respectfully submitted,

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